OFFICE OF THE OMBUDSMAN

LEGISLATIVE ASSEMBLY
PROVINCE OF ALBERTA

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LEGISLATIVE ASSEMBLY
PROVINCE OF ALBERTA

Office of the Ombudsman

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June 18, 1991

The Honourable David J. Carter
Speaker of the Legislative Assembly
325 Legislature Building
Edmonton, Alberta
T5K 2B6

Mr. Speaker:

In accordance with the provisions of Section 27(1) of the **Ombudsman Act** and as an Officer of the Legislature, I have the pleasure of submitting to you and through you, to the Legislative Assembly, the Twenty-fourth Annual Report. This report covers the activities of the Office of the Ombudsman for the calendar year 1990.

Respectfully,

Harley Johnson
Ombudsman

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From the Ombudsman Act
Chapters 0-7 RSA 1990

2(1) There shall be appointed, as an officer of the Legislature, a commissioner for investigations to be called the Ombudsman.

27(1) The Ombudsman shall in each year make a report to the Legislature on the exercise of his functions under this Act.

1990 Highlights

- The number of oral complaints and written complaints received during 1990 was 5,654 and 923 respectively; this is a decrease of 5 percent.

- Unsupported complaints (complaints for which no government administrative error is determined) outnumber the supported complaints (complaints in which a government administrative error did occur) by a ratio of five to two. This represents an increase in the percentage of supported complaints of 3.6.

- The number of complaints about lack of access to personal information contained within government files has increased and is an issue that, for the present time, is being dealt with on a case by case basis.

- Under the new **Mental Health Act**, voluntary mental health patients do not have recourse through the Office of the Ombudsman nor the Mental Health Patient Advocate. A recommendaion has been put forth suggesting a review of this situation be conducted.

- Under the new **School Act**, the Minister of Education's decisions, as they relate to a review of a ruling by a Special Needs Tribunal, fall within the jurisdiction of the Ombudsman. The Minister of Education has accepted a recommendation to review this issue.

- A computer network in both the Edmonton and Calgary offices, with electronic linkages between the two centres, has been installed and fully implemented.

- Seventy-one presentations on the function and mandate of the Office of the Ombudsman have been made throughout the province.

- The focus of complaint resolution continues to become more facilitative along with the other priorities of this office which include educational, investigative and managerial upgrades.

- The pressing need for "complainant protection," which would allow people to lodge complaints without fear of reprisal or dismissal, continues to be identified as a reality requiring a legislative solution.

- The Annual Report contains new information in the form of an organizational chart, a flow chart of investigative procedures and a revised form of investigative summaries.

Table of Contents

Remarks of the Ombudsman, Harley Johnson 1

Public Education and Community Involvement 3

Office of the Ombudsman 4

History of the Ombudsman's Office 4

Mandate of the Ombudsman 5

Function of the Ombudsman 5

Organizational Chart 6

Geographical Location of Complaints 8

Operational Statistics 9

Types of Complaints 9

Action Taken on Jurisdictional Files Closed in 1990 11

Length of Time to Resolve Complaints 11

Operational Statistics by Department and Agency 12

Method of Handling Complaints 14

Flow Chart of Complaints 14

Investigative Summaries 16

Excerpts from the Ombudsman Act 24

1

Remarks of the Ombudsman, Harley Johnson

This is my second report to the Legislative Assembly since being appointed Ombudsman for the Province of Alberta but it is the first report which reflects investigations conducted under my direct supervision. I am pleased to say that the priorities of the Office of the Ombudsman as outlined in last year's report have been addressed and will continue to represent the focus of the office during the upcoming year. Specifically, the four priorities established were educational, investigative, managerial and facilitative.

Educational: There was a total of 71 public, private and media presentations made by me during 1990 where the role of the Ombudsman was presented. The reason for this focus is to provide as many people as possible with an understanding of the role I and my staff play in our function to investigate complaints about the administrative actions of the provincial government. In addition to the actual presentations, I set aside time for people to meet with me to ask questions of a general nature in a group setting or specific items or concerns on a one-to-one basis. Where appropriate, I have had members of my staff in attendance to answer questions or to accept complaints. The presentations have been well accepted with numbers of up to 300 people in attendance. Of significance is that while the number of complaints registered with my office has not increased (in fact, a minor decrease occurred), complaints received from areas where there was a public presentation and media exposure to the role of the Ombudsman indicates a greater understanding of the functions of the office and the limitations to the jurisdiction of the Ombudsman. In addition, a new informational brochure outlining the functions of the Ombudsman and how to submit a concern has been developed and is in circulation.

Investigative: Upgrading of investigative and administrative support staff continues. Two new investigators, both with a wide range of skills, knowledge, and exposure to the provincial government, were hired to fill positions vacated by a retirement and an investigator who joined the Federal Corrections Investigator's office in Ottawa. Two new administrative support staff with specific skills were also hired to fill vacancies.

At the present time, negotiations are being conducted with the University of Alberta and the International Ombudsman Institute to develop an "Investigators' Course" which will be presented first in Edmonton. The intent is to make this course portable and capable of being presented throughout the world. Interviewing skills, always central to any competent investigation, will be the focus of a seminar for my investigators during the fall of 1991. Administrative support staff have attended a number of courses (particularly in the area of computer usage). These courses have been presented through the University of Alberta, the Personnel Administration Office and private enterprise. At each investigators' meeting, a guest speaker is invited. The speakers are from the Alberta Public Service and are asked to focus on areas or programs where many of our investigations occur. The purpose of these presentations is to make my investigators and administrative support staff more cognizant of the intricacies of the different programs, thereby increasing the skills level in their investigations or response to inquiries.

Managerial: As mentioned in my **Annual Report** last year, a need for office automation was identified. I am pleased to report that this has now occurred. A full wide area network has been implemented, linking Edmonton and Calgary electronically for file transfer, electronic mail, spreadsheet, word processing and calendaring functions. As with all computer upgrading, there have been a few 'glitches', but as time passes and the skill level of the staff improves, fewer and fewer problems are occurring.There has been a marked increase in efficiency and effectiveness and these improvements will continue. Even more pleasing is that this was accomplished within existing budget parameters.

A second focus in this category was upgrading management training to include sessions supplied by the Personnel Administration Office and outside sources, and the secondment of my Director of Legal Services to private industry for one year and the secondment of a Law Professor from the University of Alberta to supply the legal skills required within my office.

Facilitative: I plan to continue my priority to facilitate the resolution of complaints rather than to be adversarial in completing my role. This focus was evident in my investigators attempting, where possible, an informal resolution to concerns, and during my own negotiations with Deputy Ministers and Ministers of the Crown. I am extremely pleased that all the major complaints were resolved at these levels during 1990. As such, it was unnecessary to take any complaints to the Lieutenant Governor in Council (the Cabinet) or to the Legislative Assembly itself.

In my discussions around the province on determining issues which have a significant impact on Albertans, there are some which are appropriate to comment on. The first is complainant protection. I have attempted to introduce a complainant protection clause within my Act. I have argued that there is a *perception* that people who complain to my office can in fact face some form of retribution. My sincerest belief is that where a perception exists, it is a reality in the minds of some. My research

has shown that some people fail to bring forward for formal investigation issues which should be brought forward. They will approach me confidentially but there is a fear that services will be withdrawn, ostracization will be the norm or repercussions will occur either by fellow employees or service suppliers. This phenomenon is not wide spread but is present to the degree that I am convinced of the need for action. I will continue researching this topic and I will be making further representations to correct this concern.

The second issue is the need to examine the matter of contracted agencies, specifically the agencies providing a service which is paid by public monies under governmental supervision. Basically this is a private delivery of public services issue. At the present time, a complainant can bring a concern to the attention of the department which supervises the contract and the department may investigate. I have the authority to subsequently investigate the investigation conducted by the department but I cannot examine the agency which is the subject of the complaint in the first instance. This allows for an examination of the process but not of the merits of the complaint. If the agency were part of a government department, this anomaly would not occur. Initial discussions have taken place with the Deputy Ministers of the Department of Family and Social Services, the Department of the Solicitor General and the Department of Health, as well as some contracted agencies. Further research and development is being conducted with a view to making a formal recommendation through the Standing Committee on Legislative Offices.

In my previous annual report, I commented on changes in the **Mental Health Act** and the **School Act** but I was unsure at that time how the changes would impact my office. The recently made public Annual Report of the Mental Health Patient Advocate argued that he has the authority to assist involuntary mental health patients but that voluntary patients lacked access to his office. Previously, both types of complainants had access to the Ombudsman. I fully support his concern that voluntary patients in mental health facilities do not have the same protection as involuntary patients. I have had an initial meeting with the Deputy Minister of Health where this issue was discussed and I am to be invited to comment on this issue (and other areas) during upcoming negotiations surrounding proposed revisions to the **Mental Health Act.** I believe this is a healthy way to ensure the rights of a particular group of patients do not fall between the cracks.

The new **School Act** establishes a process whereby the Minister of Education may review a decision of a local school board relating to the rights of a student with reference to placement in a special education program, education in French, a home education program, expulsion, access to and the accuracy or completeness of a student record, and the amount of payment of fees and costs. The Act permits the Minister himself to make the decision on the matter under reveiw or delegate the decision making to a review committee of experts. In either case, the Ombudsman has the authority to investigate that decision. When the Minister makes the decision, however, the situation is undesirable. Under other legislation, decisions on such matters are made by tribunals, boards or administrators, not by the respective Minister. In these cases, the Ombudsman does not directly review the Minister's decision. The Minister of Education's decisions under the **School Act** may develop a conflict of roles whereby the Ombudsman is publicly criticizing a Minister of the Crown, such criticism being made through the Legislative Assembly — a role of the Opposition not of an Officer of the Legislature.

I have met with the Minister of Education and he has agreed to review this situation.

A final issue which warrants comment is based on access to information. Many queries are received by my office which indicate an inability to obtain information contained within government files. It is not my role to advise the government on legislative policy; however, it is within my purview of responsibility to review administrative practices which include practices dealing with privacy and access to information. As a general administrative practice, personal information contained within government files should be available to be reviewed by individuals and I will make the appropriate recommendations as they occur within the bounds of a specific complaint. I am of the belief that this access should only be limited when the issue deals with police investigations, security, or a court order. There is a need for continuing dialogue to establish a clear, reasoned and published criteria governing public access to information as a matter of fair administrative practice. As Ombudsman for British Columbia, Mr. Stephen Owen made the comment, "Perhaps nothing is more disarming of public controversy than openness."

During 1990, I had the pleasure of welcoming to my office Herr Michael Jung and Herr Bernd Reuter, Members of Parliament from Germany, who are involved in a Parliamentary Committee which oversees Ombudsman functions in their country. Also, the Ombudsman for British Columbia, in his role as President of the International Ombudsman Institute, visited for the purpose of discussing our support for Ombudsmanship on the international scene.

In concluding my remarks, I would like to say that the role of Ombudsman is extremely challenging and

exceptionally rewarding. The ability to investigate complaints and make recommendations after a full and independent review of the issues and the acceptance of the recommendations by the government, its departments and agencies, is particularly gratifying.

There has been a trust developed over time between the Office of the Ombudsman and government departments and agencies as well as the public, and I will continue to make every effort possible to ensure this trust continues.

Public Education and Community Involvement

Presentations

Community Open Forums
Ft. McMurray
Olds
High Prairie
Slave Lake
Lac La Biche

Agencies and Organizations
Arbitration and Mediation Society, Edmonton
Petroleum Industry, Annual Safety Seminar, Kananaskis
Foster Parents Society, Edmonton
Council of Administrative Tribunals, Edmonton
Rotary Club of Calgary, Olympic, Calgary
Friends of Schizophrenics, Calgary
Rotary Club of Calgary, Chinook, Calgary
Chamber of Commerce, Ft. McMurray
John Howard Society, Edmonton
Kiwanis Club, Wetaskiwin
Educators' Conference, Panorama
Edmonton/Jasper Rotary Club
Canadian Ombudsman Conference, Halifax
Chamber of Commerce, Stony Plain
Kiwanis Club of Northmount, Calgary
Canadian Arbitration & Mediation Society
City Wide Block Watch Association, Calgary

Educational Institutes
University of Alberta, Administrative Law Class
University of Alberta, Student Advisory Services
Northern Alberta Institute of Technology
Alberta Vocational College, Calgary
Canadian Union College, Lacombe
University of Alberta, Master of Public Management Program
Ft. McMurray Composite High School
Keyano College, Ft. McMurray
Olds College
Alberta Vocational College, Grouard
Alberta Vocational College, Slave Lake
Alberta Vocational College, Lac La Biche
University of Alberta, Non-Academic Staff

Government Departments, Boards and Agencies
Human Rights Commission
Warburg Pembina Surface Rights Group, Warburg
Legislative Interns
NDP Caucus, Edmonton
Maintenance Enforcement Program, Edmonton
Health Facilities Review Committee, Edmonton
Attorney General's Department, Nisku
Alberta Crown Attorney's Association, Banff
Alberta Government Civil Lawyers' Association, Banff
NDP constituency offices, Edmonton
Solicitor General Senior and Executive Managers
Solicitor General Department Contracted Agencies

Media Contacts

Radio Talk Shows
KIK-FM, Calgary
Video-Tron, Edmonton
CJOK, Ft. McMurray
KBS, High Prairie
CKWA, Slave Lake

Media Interviews
Radio:
CBC, Calgary
CFCN, Calgary
CJ-92, Calgary
Native Perception, Lac La Biche
Q-91, Calgary
ABC Cable, Ft. McMurray

Newspaper:
Edmonton Journal
Edmonton Sun
Calgary Sun
Calgary Herald
Alberta News & Features
Windspeaker
South Peace News, Grouard

Press Conference:
Calgary, re Appointment to Ombudsman
Edmonton, re Appointment to Ombudsman
Edmonton, re Special Report on Repatriation of Native Foster Children
Edmonton, re Annual Report
Ft. McMurray, various issues

4

Office of the Ombudsman

History of the Ombudsman's Office

Alberta has the proud distinction of having established, in 1967, the first official Office of the Ombudsman in North America. Historical counterparts to the Ombudsman, however, extend back to the Roman era in 200 B.C.; the Han Dynasty of China (202 B.C. to A.D. 221) with its elaborately developed administrative control system referred to as The Control Yuan; the Islamic Legal System in 634 A.D.; the reign of the second Caliph Omar (A.D. 634 to 644) in Arabia; and medieval Europe where the Christian Church often served as an Intercessor between subject and feudal lord. The duties of these early Ombudsman-like officials basically involved supervising and controlling the administration to ensure the wishes of the governing body were being carried out. Complaints of citizens were solicited but with the intent of controlling the administration, not with a view to assisting an individual experiencing administrative injustices.

It was not until the early 18th century that more direct organizational antecedents of the current-day Ombudsman appeared. In 1722, Peter the Great appointed a Procurator General for the Russian empire. This "eye of the Czar" was responsible for both the enforcement of laws and the protection against excessive administrative actions. In 1713, Charles IX appointed an "Ombudsman" for his Swedish kingdom to act as a legal safeguard against over-zealous state administrators. However, it was the adoption of Sweden's Constitution in 1809 which created a Justitieombudsman (Ombudsman for Justice). This established the modern model for the Office of the Ombudsman.

In 1917, Finland established an Ombudsman Office fashioned after the Swedish model. Denmark's new constitution of 1953 similarly contained provisions for the election of an Ombudsman. In 1962, New Zealand became the first English speaking, common law country to successfully embrace the Ombudsman concept. Once New Zealand had adopted and implemented an Ombudsman office, in a non-Scandinavian country, the idea spread rapidly throughout the world.

In the course of the 19th and early 20th century, the investigative focus of the Ombudsman gradually began shifting away from scrutiny of maladministration on behalf of the government toward scrutiny of maladministration on behalf of individual citizens. The Ombudsman began investigating incidents of unfair treatment of individuals resulting from government policies and procedures. These cases were reported to the proper authority for corrective action. This practice of monitoring government actions with an emphasis on the aggrieved individual has become the standard.

Popularity of this relatively new phenomenon has grown in direct response to the ever increasing size and complexity of bureaucratic structures. The development of megagovernment structures combined with innovative technology creates problems for not only the users of such systems, but the operation of the system itself. Efficiency becomes the driving priority. Friendly personal service seems to diminish as the size of the system increases. This dehumanizing perception is particularly blatant when a system user is required to interact with a computer.

Efficiency and growth also present problems for the bureaucratic system in terms of vulnerability to administrative errors. The traditional means of self regulation become more difficult. Information to, and response by the appropriate level may not occur. Thus, unaddressed needs exist on the part of the system and the system users. The role of the Ombudsman, in these situations, is critical in bridging unfilled gaps and drawing attention to procedures in need of correction. The Ombudsman serves as a connecting link between individuals and the government. His duty is to not only actively promote justice but to balance the scales of justice, and justice, as defined by St. Thomas Aquinas is, ". . . a constant and perpetual will to yield to each one his right."

In 1965, the Government of Alberta was convinced of the need to establish a tribunal to assist people dissatisfied with the decisions or actions of departments and agencies of the government. In studying the issue, an independent committee, under the chairmanship of Mr. Carleton W. Clement, Q.C., identified a legitimate need to appoint a provincially legislated Commissioner. The Committee recommended this service be provided through the creation of an Office of the Ombudsman. The Legislative Assembly agreed and appointed the first Ombudsman for Alberta in 1967. While Alberta was the forerunner, every other province in Canada, with the exception of Prince Edward Island, has since followed Alberta's lead. Canada, as a result of Alberta's appointment of an Ombudsman, became the fourth Commonwealth country after New Zealand, Guyana and the United Kingdom to establish an Ombudsman's Office.

5

Mandate of the Ombudsman

The Ombudsman of Alberta is empowered by the Legislative Assembly with the authority to investigate complaints against departments, boards and agencies of the provincial government. This broad scope of authority has few limitations. Exempt from the Ombudsman's jurisdiction are the actions and decisions of the courts, the Legislature, and government lawyers acting as solicitors for the Crown.

Function of the Ombudsman

The primary purpose of the Ombudsman lies in providing impartial investigations on behalf of citizens who feel they have suffered an injustice through the actions of departments, agencies or officials in the Government of Alberta. Presiding over a case clarifying the jurisdiction of the Ombudsman, Alberta Chief Justice J.V.H. Milvain stated that, ". . . the basic purpose of an Ombudsman is provision of a 'watch dog' designed to look into the entire workings of administrative law." He further observed that, ". . . the Ombudsman can bring the lamp of scrutiny to otherwise dark places, even over the resistance of those who would draw the blinds."

In addressing allegations of bureaucratic wrongdoing, the Office of the Ombudsman is established to serve as a complaint mechanism of last resort. This means the Ombudsman cannot intervene until all legislated avenues of appeal have been exhausted by a complainant. For instance, many government departments, boards, and agencies have specific in-house methods of appeal designed to resolve complaints. These various complaint mechanisms are endorsed through legislation, regulation or policy to maintain internal systems within a particular government body. Citizens who have exhausted available avenues of appeal and remain dissatisfied with the outcome are encouraged to write to the Ombudsman. Assistance will be provided to people who require help in completing a written letter outlining the nature of a complaint.

On a daily basis, thousands of government employees make decisions affecting the lives of Albertans. In commenting on the many ways in which the actions of citizens are influenced by government, George B. McClellan, Alberta's first Ombudsman, stated, "There is hardly any field of business, manual labour, or other occupation in which the average person finds himself engaged, where he is not subject to numerous forms of government controls."

The majority of the actions and decisions of government officials are just and reasonable, however errors do occur. With the great proliferation of bureaucracies to administer government programs, a certain number of mistakes inevitably occur. It is the duty and function of the Ombudsman to identify, address and recommend those mistakes be rectified. Ombudsman investigations into complaints may not only obtain redress for an injustice or a grievance, but an Ombudsman investigation can also serve to exonerate and vindicate government agencies and civil servants from unjustified accusations.

The ability of the Ombudsman to focus, without delay, on administrative processes not functioning as intended, is invaluable. The Office of the Ombudsman is independent of government bureaucracy, but at the same time the Ombudsman is given extensive powers requiring disclosure and access to all government information. For example, government employees, who in the Ombudsman's opinion, are able to provide information relating to the matter being investigated, are required to furnish such information and produce any documents which may aid the Ombudsman in his investigation. The Ombudsman is empowered to enforce compulsory compliance to obtain the necessary information, however, such steps are rarely necessary. The broad sweeping legislated authority is unique to the Ombudsman but equally vital in conducting an impartial investigation based on all the facts.

It was Socrates, a man who professed not to be wise but to seek wisdom, who said, "Four things belong to a judge: to hear courteously, to answer wisely, to consider soberly, and to decide impartially." This is an excellent description of an Ombudsman.

Investigating complaints of bureaucratic wrongdoings is provided at no cost to the individual requesting service. The Ombudsman has an able staff composed of 11 investigators and 8 support staff. Offices are located in both Edmonton and Calgary. People living elsewhere in the province can easily access the Office, toll-free, through a R.I.T.E. operator or a Zenith number. All investigations are conducted in a confidential manner — a requirement of the **Ombudsman Act.**

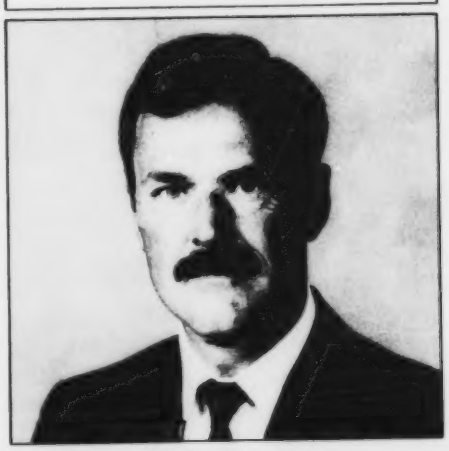
A high priority is placed on being accessible to the people of Alberta. To fulfill this commitment, the Ombudsman, at times accompanied by his investigators, undertakes regular visits into all areas of the province. The purpose of these trips is to increase the awareness of the Ombudsman's Office and offer the Ombudsman's services locally. All investigative staff travel throughout the province dealing with investigations and meeting with complainants.

Organizational Chart

Legislative Assembly

Standing Committee
on
Legislative Offices

Ombudsman



Harley Johnson

Secretary to the Ombudsman

Helen Campbell

Director: Finance and Administration

Dixie Watson

Finance & Administration Clerk

Beth Staden

Supervisor, Administration

Lynn Scott

Administration Clerks

Marilyn Strohschein

Ella-Rae Trelenberg

Carolyn OpdenDries

Director: Investigative Services (Northern Region)

Brian Carver

Ombudsman Investigators

Diann Bowes

Dan Johns

Jackie Dallman

John Hillary

Jim French

Director: Legal Services

Mary Marshall

Director: Operational Services (Southern Region)

Ed Chetner

Ombudsman Investigators

Gordon Schlagel

Dale Hensley

Supervisor, Administration

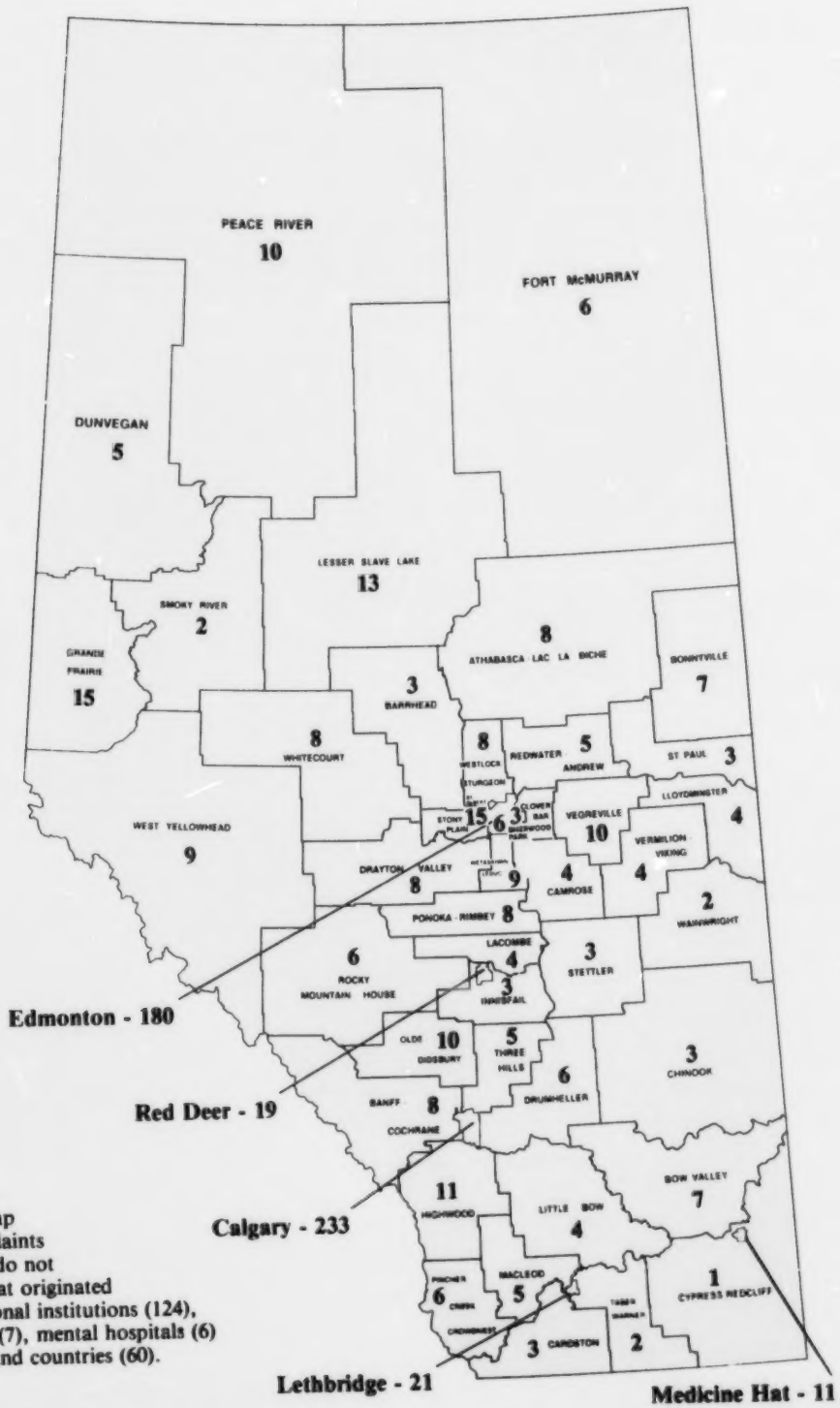
Anna Moline

Administration Clerk

Kim Griffith

8

Geographical Location of Complaints



Provincial Electoral Divisions

The figures on the map refer to written complaints received in 1990 and do not include complaints that originated in provincial correctional institutions (124), federal penitentiaries (7), mental hospitals (6) and other provinces and countries (60).

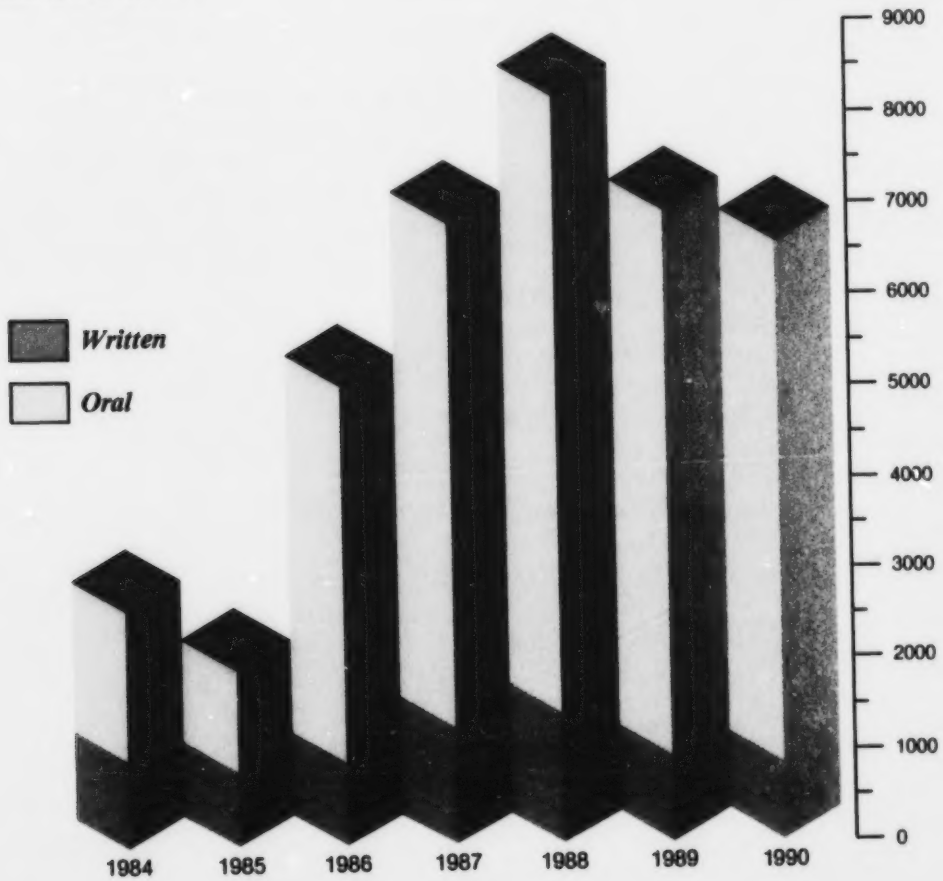
9

Operational Statistics

Types of Complaints

Year	Written	Oral	Total
1984	986	1600	2586
1985	817	1104	1921
1986	915	4171	5086
1987	1219	5585	6804
1988	1411	6797	8208
1989	988	5958	6946
1990	923	5674	6597

For the second year in a row, the number of complaints has dropped slightly. The overall decrease is 5% with a marginally greater decrease in the number of written complaints. As is evident from the statistics, the complaints follow a somewhat cyclical pattern.



Handling of Oral Complaints Received During 1990

Jurisdictional	
Referred to Appropriate Authority or Appeal	1287
Resolved to Complainant's Satisfaction	309
No Remedy Available	113
Advised to Write the Ombudsman	308
Non-Jurisdictional	
Referred or Assistance Provided	3657

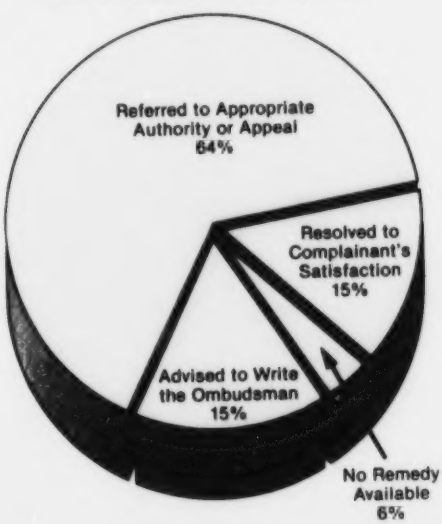
Requests for information and complaints about matters outside the jurisdiction of the Office account for 65% of the 5,674 telephone calls received during 1990. The remaining 35% were from callers wishing to register complaints about the actions of the government falling within the jurisdiction of the Ombudsman. Callers who have exercised the existing avenues of appeal and remain dissatisfied with government actions or decisions are advised to submit a written letter of complaint to the Ombudsman. Callers who have not exercised the appeal rights are given the relevant information to enable them to do so. It must be remembered that in addressing allegations of bureaucratic wrongdoing, the Office of the Ombudsman is established to function as a complaint mechanism of last resort.

Handling of Written Complaints Received During 1990

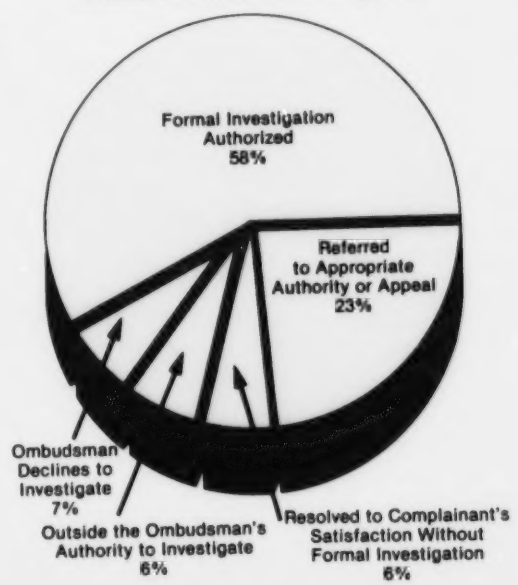
Jurisdictional	
Referred to Appropriate Authority or Appeal	181
Resolved to Complainant's Satisfaction Without Formal Investigation	46
Outside the Ombudsman's Authority to Investigate	42
Ombudsman Declines to Investigate	57
Formal Investigation Authorized	452
Action Pending	4
Non-Jurisdictional	
Referred or Assistance Provided	141

A total of 923 letters of complaint were received during 1990, down from 988 letters received the previous year. Five out of every six written complaints received in 1990 were within the jurisdiction of the Office to investigate. This means that 85% of the people complaining by letter lodged complaints against actions or decisions of government bodies that can be investigated by the Ombudsman.

Oral Jurisdictional Complaints


Referred to Appropriate Authority or Appeal 64%
Resolved to Complainant's Satisfaction 15%
Advised to Write the Ombudsman 15%
No Remedy Available 6%

Written Jurisdictional Complaints


Formal Investigation Authorized 58%
Referred to Appropriate Authority or Appeal 23%
Ombudsman Declines to Investigate 7%
Outside the Ombudsman's Authority to Investigate 6%
Resolved to Complainant's Satisfaction Without Formal Investigation 6%

Action Taken on Jurisdictional Files Closed in 1990

Files Carried Over From Previous Years		**195**
Files Opened in 1990		**782**
Investigated		**435**
Subsequently Discontinued	65	
Complaint Supported	103	
Complaint Not Supported	267	
Not Investigated		**326**
Resolved Informally	46	
No Authority to Investigate	42	
Other Remedy or Appeal Available	181	
Declined on Discretionary Grounds	57	
Files Closed in 1990		**761**
Files Carried Over to 1991		**216**

While most of these terms are self explanatory, it is important to understand the meaning of four of these terms.

Subsequently Discontinued. Formal investigations, once commenced, may be discontinued by either the complainant or the Ombudsman. Such action is usually the consequence of either learning that a department, on being notified of a complaint, has taken immediate steps to resolve it, or on receipt of information indicating further investigation is unnecessary.

Complaint Not Supported. This means that no administrative or procedural error on the part of the department or agency has been found. The fact that the department or agency acted appropriately, and why, is explained in each case to the complainant. Very often, such detailed attention and explanation satisfies the complainant and is a very important function of the Office.

Other Remedy or Appeal Available. This means that there exists a specific appeal of the decision or action complained of which could grant immediate relief to the complainant. In each such case, the nature of the appeal was explained to the complainant, in writing, at the time the investigation was declined. The complainant was also advised that if he or she remained dissatisfied as a result of the appeal, a letter of complaint should be sent to the Ombudsman.

Declined on Discretionary Grounds. Complaints declined on discretionary grounds are those which, under section 14(2) of the **Ombudsman Act**, the Ombudsman refuses to investigate because the matter complained of has been known to the complainant for more than twelve months; the subject matter of the complaint is trivial; the complaint is frivolous or vexatious or is not made in good faith; or, the complainant does not have a sufficient personal interest in the subject matter of the complaint.

The number of jurisdictional complaints investigated during 1990 was 435. This is considerably less than the 520 investigated complaints in 1989 and the 566 investigated complaints in 1988. The decrease is due in part to the reduced number of complaints received in 1989 and 1990 and may also be indicative of the cyclical nature of complaints over time.

The number of jurisdictional complaints not investigated has remained relatively constant over the past few years. In 1990, the number of jurisdictional complaints not investigated totalled 326. This compares to a similar figure of 329 in 1989 and 424 in 1988.

Unsupported complaints (the complaints for which no government administrative error is found) outnumber the supported complaints (the complaints in which a government administrative error did occur) by a ratio of five to two. In other words, for every two complaints for which an administrative error occurred, there were five complaints for which there was no government error identified. The ratio for 1989 was three unsupported complaints to every one supported complaint.

It should not be assumed from the ratio of unsupported to supported complaints that the performance of government has decreased in a significant manner. Rather, attention should focus on the importance of effective communication within government, so that all employees understand the appropriate methods of service delivery. Equally important is effective communication between government and the public as many supported complaints can be directly attributable to communication shortfalls.

Length of Time to Resolve Complaints

The principles governing the investigation of a complaint are twofold: (1) a comprehensive examination of all the pertinent factors occur, and (2) the outcome of each investigation is reached in a fair and impartial manner. Of primary concern is the investigative criteria; of secondary importance is the timeliness of an investigation. The length of time taken to complete investigations in 1990 ranged from 6 days to 25 months. The majority of complaints were completed between two and six months. While the Office strives to complete investigations within a three month time frame, the complexity of some issues takes a considerable length of time. The time factor, while important, is not allowed to compromise the integrity of an investigation.

Operational Statistics by Department and Agency

Department	Previously Opened Files	Files Opened in 1990	Investigated: Total	Investigated: Subsequently Discontinued	Investigated: Complaint Supported	Investigated: Complaint Not Supported
ADVANCED EDUCATION	3	7	3	0	2	1
AGRICULTURE	3	9	4	1	1	2
ATTORNEY GENERAL	11	59	15	4	3	8
CAREER DEVELOPMENT & EMPLOYMENT	0	7	2	0	1	1
CONSUMER & CORPORATE AFFAIRS	5	5	6	0	2	4
CULTURE AND MULTICULTURALISM	0	2	0	0	0	0
ECONOMIC DEVELOPMENT & TRADE	0	6	5	0	0	5
EDUCATION	1	5	2	0	0	2
ENERGY	0	2	0	0	0	0
ENVIRONMENT	1	7	3	0	0	3
FAMILY & SOCIAL SERVICES	46	199	99	19	36	44
FORESTRY, LANDS & WILDLIFE	7	13	12	1	0	11
HEALTH	12	33	16	3	5	8
LABOUR	5	8	7	2	1	4
MUNICIPAL AFFAIRS	7	12	9	0	2	7
PUBLIC WORKS, SUPPLY & SERVICES	0	4	2	0	0	2
RECREATION & PARKS	1	2	1	0	0	1
SOLICITOR GENERAL	1	14	1	0	0	1
Correctional Services	22	145	79	15	21	43
TRANSPORTATION & UTILITIES	7	12	11	2	2	7
TREASURY	3	9	2	0	0	2
TOTAL: Departments	135	560	279	47	76	156
Boards & Agencies						
AGRICULTURAL DEVELOPMENT CORPORATION	0	1	1	0	0	1
ALBERTA ALCOHOL & DRUG ABUSE COMMISSION	0	2	0	0	0	0
ALBERTA GOVERNMENT TELEPHONES	2	5	6	0	1	5
ALBERTA LIQUOR CONTROL BOARD	0	1	0	0	0	0
ALBERTA MORTGAGE & HOUSING CORPORATION	3	8	7	1	1	5
ALBERTA RESEARCH COUNCIL	0	1	0	0	0	0
ENERGY RESOURCES CONSERVATION BOARD	4	3	1	0	0	1
EXECUTIVE COUNCIL	0	1	0	0	0	0
HUMAN RIGHTS COMMISSION	1	4	3	1	0	2
OCCUPATIONAL HEALTH & SAFETY	2	2	0	0	0	0
OFFICES OF THE LEGISLATIVE ASSEMBLY	0	2	0	0	0	0
PERSONNEL ADMINISTRATION OFFICE	1	3	2	0	1	1
PROFESSIONS & OCCUPATIONS BUREAU	1	0	1	0	0	1
PUBLIC SAFETY SERVICES	0	2	1	0	1	0
TREASURY BRANCHES	2	7	3	0	0	3
WORKERS' COMPENSATION BOARD	45	180	131	16	23	92
TOTAL: Boards & Agencies	61	222	156	18	27	111
TOTAL:	196	782	435	65	103	267

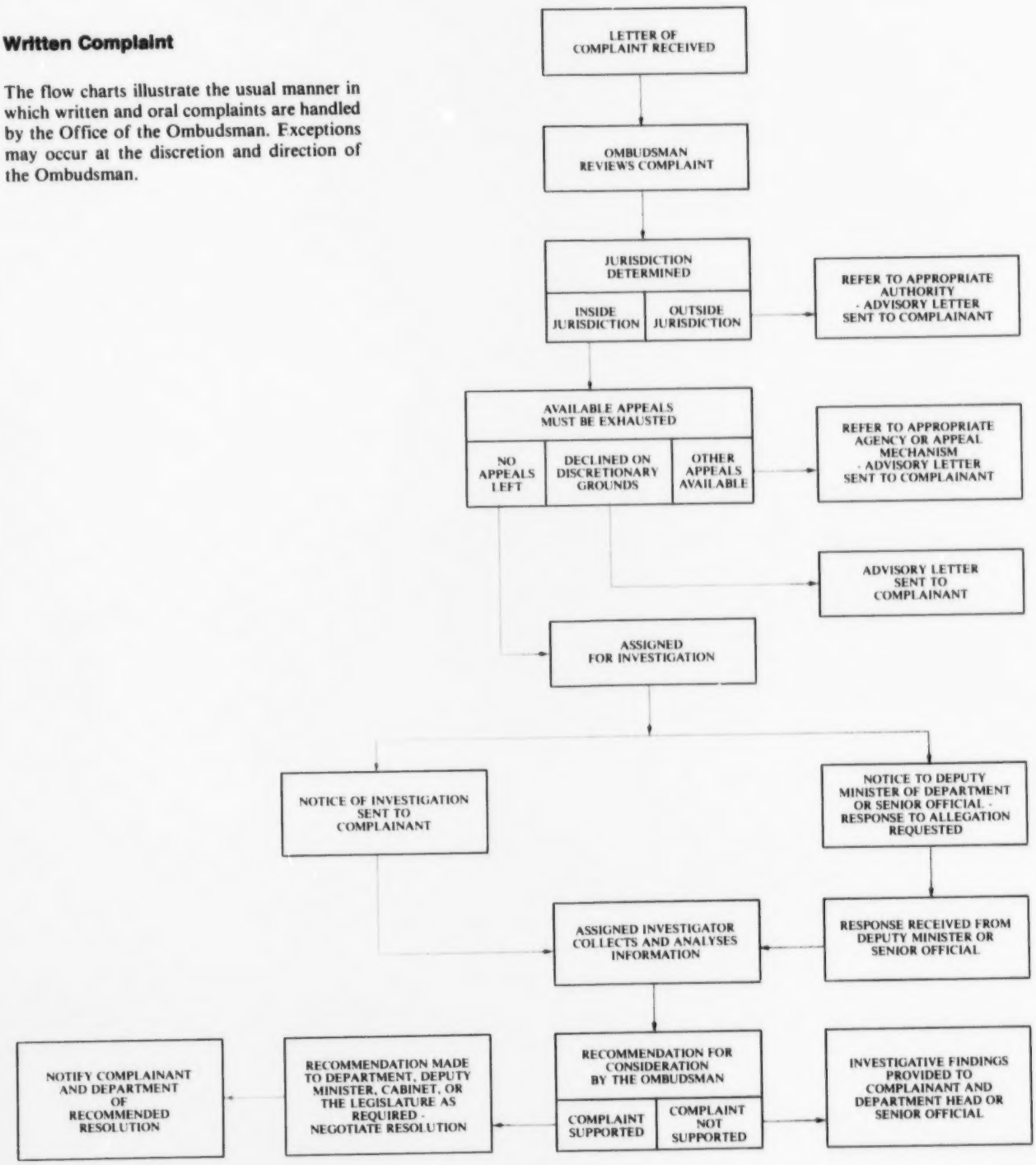
Not Investigated

TOTAL NOT INVESTIGATED	RESOLVED INFORMALLY	NO AUTHORITY TO INVESTIGATE	OTHER REMEDY OR APPEAL AVAILABLE	DECLINED ON DISCRETIONARY GROUNDS	CLOSED IN 1990	CARRIED FORWARD TO 1991	ACTION PENDING	Department
4	0	1	2	1	7	3	0	ADVANCED EDUCATION
6	0	0	4	2	10	2	0	AGRICULTURE
37	5	11	14	7	52	18	0	ATTORNEY GENERAL
2	0	0	2	0	4	3	0	CAREER DEVELOPMENT & EMPLOYMENT
1	0	0	1	0	7	3	0	CONSUMER & CORPORATE AFFAIRS
1	0	0	0	1	1	1	0	CULTURE AND MULTICULTURALISM
0	0	0	0	0	5	1	0	ECONOMIC DEVELOPMENT & TRADE
2	0	0	2	0	4	2	0	EDUCATION
1	1	0	0	0	1	1	0	ENERGY
2	0	1	1	0	5	3	0	ENVIRONMENT
80	14	7	44	15	179	66	2	FAMILY & SOCIAL SERVICES
3	0	1	1	1	15	5	0	FORESTRY, LANDS & WILDLIFE
16	4	4	4	4	33	12	0	HEALTH
4	1	1	2	0	11	2	0	LABOUR
7	2	0	4	1	16	3	0	MUNICIPAL AFFAIRS
0	0	0	0	0	2	2	0	PUBLIC WORKS, SUPPLY & SERVICES
2	0	0	2	0	3	0	0	RECREATION & PARKS
11	1	5	2	3	12	3	0	SOLICITOR GENERAL
62	12	1	42	7	141	26	1	Correctional Services
4	1	0	1	2	15	4	0	TRANSPORTATION & UTILITIES
6	0	2	3	1	8	4	0	TREASURY
251	**41**	**34**	**131**	**45**	**531**	**164**	**3**	**Departments: TOTAL**
								Boards & Agencies
0	0	0	0	0	1	0	0	AGRICULTURAL DEVELOPMENT CORPORATION
0	0	0	0	0	0	2	0	ALBERTA ALCOHOL & DRUG ABUSE COMMISSION
1	0	0	1	0	7	0	0	ALBERTA GOVERNMENT TELEPHONES
0	0	0	0	0	0	1	0	ALBERTA LIQUOR CONTROL BOARD
3	0	0	2	1	10	1	0	ALBERTA MORTGAGE & HOUSING CORPORATION
0	0	0	0	0	0	1	0	ALBERTA RESEARCH COUNCIL
3	0	2	1	0	4	3	0	ENERGY RESOURCES CONSERVATION BOARD
0	0	0	0	0	0	1	0	EXECUTIVE COUNCIL
2	0	0	2	0	5	0	0	HUMAN RIGHTS COMMISSION
1	0	0	1	0	1	3	0	OCCUPATIONAL HEALTH & SAFETY
2	0	2	0	0	2	0	0	OFFICES OF THE LEGISLATIVE ASSEMBLY
0	0	0	0	0	2	2	0	PERSONNEL ADMINISTRATION OFFICE
0	0	0	0	0	1	0	0	PROFESSIONS & OCCUPATIONS BUREAU
0	0	0	0	0	1	1	0	PUBLIC SAFETY SERVICES
4	0	1	3	0	7	2	0	TREASURY BRANCHES
59	5	3	40	11	190	35	1	WORKERS' COMPENSATION BOARD
75	**5**	**8**	**50**	**12**	**231**	**52**	**1**	**Board & Agencies: TOTAL**
326	**46**	**42**	**181**	**57**	**762**	**216**	**4**	TOTAL

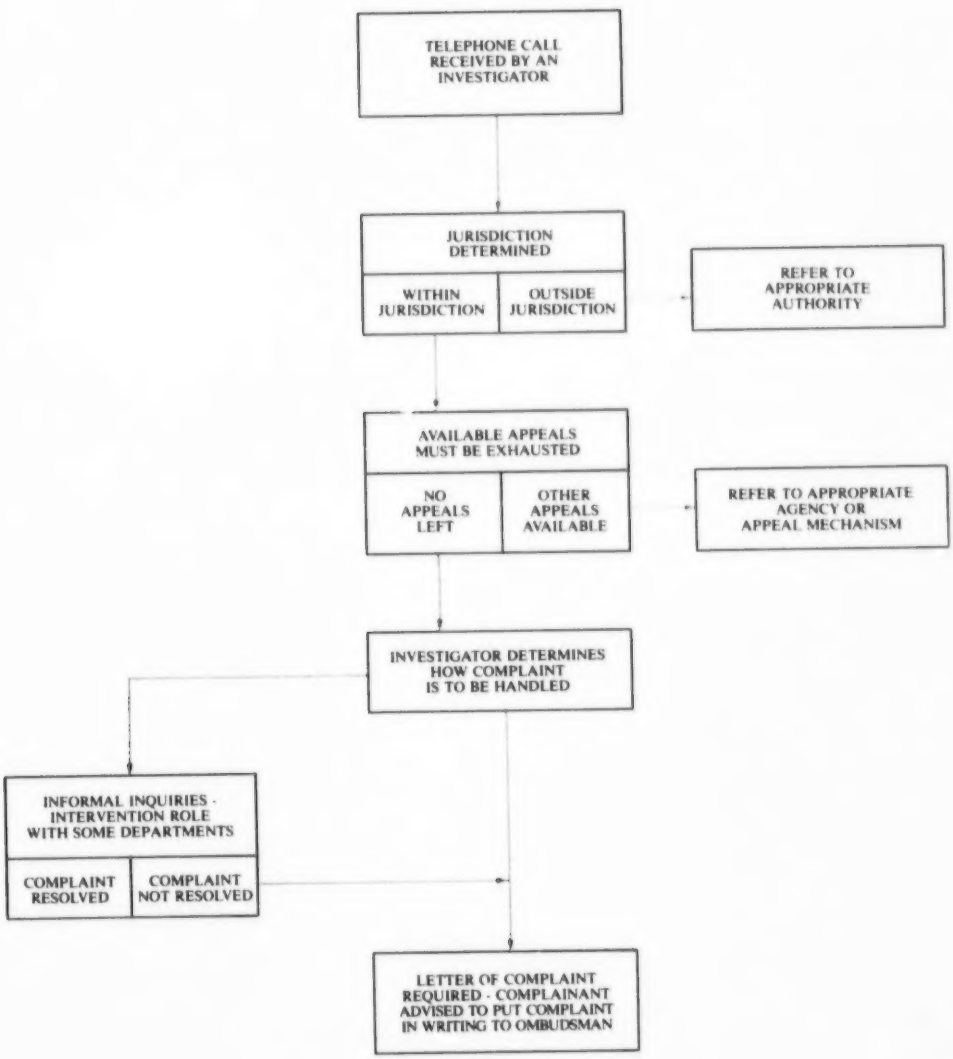
Flow Chart of Complaints

Written Complaint

The flow charts illustrate the usual manner in which written and oral complaints are handled by the Office of the Ombudsman. Exceptions may occur at the discretion and direction of the Ombudsman.


LETTER OF COMPLAINT RECEIVED
OMBUDSMAN REVIEWS COMPLAINT
JURISDICTION DETERMINED
INSIDE JURISDICTION
OUTSIDE JURISDICTION
REFER TO APPROPRIATE AUTHORITY - ADVISORY LETTER SENT TO COMPLAINANT
AVAILABLE APPEALS MUST BE EXHAUSTED
NO APPEALS LEFT
DECLINED ON DISCRETIONARY GROUNDS
OTHER APPEALS AVAILABLE
REFER TO APPROPRIATE AGENCY OR APPEAL MECHANISM - ADVISORY LETTER SENT TO COMPLAINANT
ADVISORY LETTER SENT TO COMPLAINANT
ASSIGNED FOR INVESTIGATION
NOTICE OF INVESTIGATION SENT TO COMPLAINANT
NOTICE TO DEPUTY MINISTER OF DEPARTMENT OR SENIOR OFFICIAL - RESPONSE TO ALLEGATION REQUESTED
ASSIGNED INVESTIGATOR COLLECTS AND ANALYSES INFORMATION
RESPONSE RECEIVED FROM DEPUTY MINISTER OR SENIOR OFFICIAL
NOTIFY COMPLAINANT AND DEPARTMENT OF RECOMMENDED RESOLUTION
RECOMMENDATION MADE TO DEPARTMENT, DEPUTY MINISTER, CABINET, OR THE LEGISLATURE AS REQUIRED - NEGOTIATE RESOLUTION
RECOMMENDATION FOR CONSIDERATION BY THE OMBUDSMAN
COMPLAINT SUPPORTED
COMPLAINT NOT SUPPORTED
INVESTIGATIVE FINDINGS PROVIDED TO COMPLAINANT AND DEPARTMENT HEAD OR SENIOR OFFICIAL

Oral Complaint


TELEPHONE CALL RECEIVED BY AN INVESTIGATOR
JURISDICTION DETERMINED
WITHIN JURISDICTION
OUTSIDE JURISDICTION
REFER TO APPROPRIATE AUTHORITY
AVAILABLE APPEALS MUST BE EXHAUSTED
NO APPEALS LEFT
OTHER APPEALS AVAILABLE
REFER TO APPROPRIATE AGENCY OR APPEAL MECHANISM
INVESTIGATOR DETERMINES HOW COMPLAINT IS TO BE HANDLED
INFORMAL INQUIRIES - INTERVENTION ROLE WITH SOME DEPARTMENTS
COMPLAINT RESOLVED
COMPLAINT NOT RESOLVED
LETTER OF COMPLAINT REQUIRED - COMPLAINANT ADVISED TO PUT COMPLAINT IN WRITING TO OMBUDSMAN

Investigative Summaries

The following investigative summaries illustrate the nature and variety of complaints dealt with during 1990. Although the complaints are grouped by department, they have been chosen to reflect typical matters of dispute between citizens and the bureaucracy that may generally arise in any department of the government. Complaints against government departments may take the form of formal complaints, some of which result in a departmental policy or procedural change and informal complaints or requests for information.

Formal investigations occur as a result of four different sets of circumstances: (1) a written letter of complaint (2) the Ombudsman's "own motion" (3) a Ministerial request or (4) a referral from any committee of the Legislative Assembly. An "own motion" investigation refers to instances in which the Ombudsman, on his own initiative, decides to investigate an issue. The primary aim of an investigation is to resolve situations where citizens have been adversely and unfairly affected by the administration of government. Often in the course of an investigation, a need is identified for departmental policies or procedures to be revised to provide a more equitable method of dealing with issues. In these instances the Ombudsman acts as a catalyst for positive change.

It is misleading to view the Office of the Ombudsman solely as a formal investigator of complaints. Many telephone calls and letters are most appropriately dealt with on an informal basis rather than becoming the subject of a protracted investigation. Such informal resolution of complaints entails (1) providing information to people who call, or (2) informally mediating between the complainant and the department official. For those complaints that can be resolved informally, the value lies in providing a more expeditious service to the public.

Departments

1. Advanced Education

Advanced Education agreed to change its policy of excluding overweight applicants to the Nursing Assistant Program, on the basis of obesity alone.

This arose from a complaint that an individual had been denied admission for the sole reason that this individual was overweight. Although the Department expressed concern about student and patient safety, particularly with regard to the nursing of total care patients, it accepted that obesity alone was an insufficient reason for rejection. Medical grounds were deemed to be more appropriate.

2. Agriculture

An individual complained to this office that the Department had reneged on a verbal agreement to hire for a specific period of time to do a specific job. The individual was promised employment, rates of pay were set and work was to be commenced on a specific date for a period of six months. The day before this person was to be hired, this individual was contacted to advise that no job was available. Investigation determined that the complainant had been treated unfairly and as a result of a recommendation made to the Department, the complainant was compensated for an amount arrived at which covered the period from when employment was to commence to when other employment was found.

3. Attorney General

The Department of the Attorney General amended its procedure with regard to sales conducted by the Sheriff's Office to ensure that terms and conditions contained in newspapers advertising sales by tender were adhered to.

The investigation prompting this adjustment related to a situation wherein goods were advertised for tender with a specific condition that bids be accompanied by a 10% deposit in the form of a certified cheque. The successful tenderer, however, did not provide a deposit in that form. While the complainant's grievance was substantiated, the sale could not be reversed; however, the Department did compensate the complainant for out-of-pocket expenses.

A person complained that the Public Trustee's Office had not properly administered a relative's estate. This person was one of two executors, but family conflict had resulted in court appointment of the Public Trustee to probate the Will. The estate was distributed, but the complainant's share was not received. A cheque had been personally delivered by a Sheriff's Officer, but earlier, in error, a courthouse clerk had stamped it to be deposited in a specified financial institution to the credit of the Provincial Treasurer.

The complainant returned the cheque, but instead of replacing it, the Public Trustee sought court direction which resulted in another beneficiary receiving the money.

The situation was complex, involving the complainant's concerns with Revenue Canada, Land Titles, and the legal system. It was further aggravated by family conflict and the complainant's perception that the government was prejudiced.

After negotiations between my office and the Department, the Department accepted that it had erred administratively and offered to negotiate a significant financial settlement. The complainant, however, rejected this offer, deciding to try to have the Will probated again. As probate is a court process, this effectively negated any further involvement by my office.

An individual, resident in another province, telephoned to complain about being unable to obtain compensation from the Crimes Compensation Board after being the victim of criminal action 18 months earlier in the Province of Alberta. The caller alleged that on contacting the Board, advice had been given not to apply as any applicant had to be a resident of Alberta.

Inquiries were made and it was determined that place of residence was not a factor, although there was a one year time limitation in which to file an application. That one year time limitation could be extended if there was reason for special consideration. The caller was put in touch with an appropriate staff member of the Board and advised to contact this office again if the matter was not satisfactorily resolved. There was no further contact.

A complaint was received from a caller in another province whose spouse had received a subpoena to testify at court in Alberta a week later. The trial was in connection with the murder of a child. The witness did not have the financial ability to make the trip and alleged that Crown Counsel, in Alberta, had been unsympathetic, threatening to arrest the witness and arrange for transportation in custody.

Contact with the Court Administrator revealed that flight arrangements had been made and would be paid directly by the Department. Additionally, steps had been taken to have a taxi deliver the witness from the airport to the court house. This information was relayed to the complainant who evidently was unaware of it.

4. Career Development and Employment

The Department of Career Development and Employment changed its procedures with regard to the checking of references to facilitate a hiring decision. Line personnel will no longer check references and if additional references are to be checked, the consent of the applicant is first to be obtained.

This developed out of an investigation into a complaint that an individual was unfairly denied a position with the Department after additional references were checked without first obtaining permission from the complainant. The complaint was in fact unsubstantiated; however, the procedural errors were noted in the course of the inquiry.

5. Family and Social Services

The Department of Family and Social Services made significant policy and procedural changes after an "Own Motion" investigation into the repatriation of native foster children. I made reference to this inquiry in my 1989 Annual Report, but as I was awaiting a response from the Department, I could not be specific about my recommendations.

It can now be reported that the Department has accepted my suggestions, and agreed to: increase the number of native Child Welfare Workers; expand native representation on the Child Welfare Appeal Panel; consult more with the native community; establish a monitoring system to ensure consistency in program delivery; work towards reducing confusion between overlapping jurisdictions; develop criteria for long term foster care; improve the process of foster parent selection and training; and enhance the Children's Advocate Program.

I believe this will have a positive impact upon the native foster care program in this province.

The Department of Family and Social Services is developing pamphlets to provide information for members of families from which children have been removed. These will explain how guardianship and adoption proceedings work, and will be given to parties who have an interest in these matters.

Difficulty in readily obtaining information of this nature was experienced by a grandparent seeking information about procedures and rights arising from the surrender of grandchildren by their parent. While the actual complaint was unsubstantiated, this subsidiary issue was identified, recommended to, and accepted by the Department.

The Department of Family and Social Services agreed to examine its policy covering staff applications to become foster parents and associated appeal procedures. The Department further agreed to ensure uniform application of the policy throughout the province.

This came about as a result of a staff member complaining of difficulty experienced in becoming an active foster parent during a leave of absence. It was established that due to the conditions being imposed on the approval to foster, this person was effectively excluded from receiving placements. The complainant was anticipating a total of three and one half years away from work but was only able to apply for one year's leave at a time. The complainant was told that only short-term placements could therefore be considered. Due to the rural location of the complainant, this effectively excluded this individual from the program.

The Department of Family and Social Services agreed to implement a policy covering full disclosure of the use to which video tapes of counselling sessions would be used. This came about as a result of a complaint from the parents of a child who was in custody and receiving counselling. The counselling session had been video taped. At that time, there were no policies in place surrounding consent to release information. Now, a thorough explanation will be given to a client as to how a tape may be used and to whom it will likely be shown.

The Department of Family and Social Services took procedural steps to ensure uniformity in applying Department policy that cleaning personnel were casual labour and thus entitled to an earnings exemption on their social allowance entitlement.

The inconsistency of some offices of the Department, whereby some treated cleaning personnel as self employed, came to light when a complaint was made by a cleaner who became aware of this inconsistency and was being denied an earnings exemption.

The Department of Family and Social Services agreed to change the procedure being followed by a Citizen's Appeal Panel in one area of the province. That Panel had adopted a procedure whereby appellants and Department representatives were not always given equal consideration. On occasion, a Department representative would speak to the Panel in the absence of the appellant. It was accepted that such a procedure, at the very least, could be perceived as giving the Department an unfair advantage at a hearing and was contrary to the principles of natural justice.

The Department of Family and Social Services, in conjunction with the Department of the Solicitor General, developed a coordinated procedure to assist mentally ill inmates upon their release from correctional centres. **(Note: Complaint is also noted with the Department of the Solicitor General).**

This action arose from an investigation into an allegation that no programs or help was available to inmates suffering from mental illness at the time of release from custody. There was an extensive investigation, which resulted in the complaint being unsubstantiated as programs were available. However, it became clear that there was a lack of coordination between the two Departments.

The Department of Family and Social Services changed its procedures and protocols to ensure that investigations of public complaints against contracted agencies utilize independent sources of evidence and information to ensure a quality investigation.

This action arose from an investigation of an alleged inadequate departmental inquiry into complaints of abuse and inappropriate treatment of a child placed in a contracted group home.

A complaint was made by an individual who had received an overpayment of social allowance benefits. The complainant was in the process of repaying that money but had been unable to find out how the overpayment had accumulated. As a result of our investigation, an error by the Department was identified when it was determined that a second overpayment had been added to the file. The situation was clarified for the complainant and the second overpayment was cancelled.

An out-of-province family had filed an appeal with the Child Welfare Appeal Panel requesting that the hearing be held at a location approximately half way between their home and the City of Edmonton.

Initially the Panel agreed to do this, but subsequently it reversed its position. Interaction between my Office and the Department resulted in the hearing being scheduled at the location originally requested by the complainants.

An individual seriously injured in a traffic accident was in receipt of benefits under the Assured Income for the Severely Handicapped (AISH) program. Treatment of back problems was obtained from a chiropractor which decreased the pain and improved walking considerably. Subsequently, contact was made with the complainant's social worker to see if funds to pay for the chiropractic treatments were available. It was alleged that the complainant had been told if proof of medical need for the chiropractic treatment could be provided, the Department would pay. After the required documents were submitted, the complainant was told that the program did not cover chiropractic services. In the belief that the bill would be covered, the complainant had continued attending the chiropractor and there was a substantial sum of money owing at the time of the complaint.

Subsequent negotiations by my Office resulted in the Department acknowledging that the complainant may have been misled and agreeing to pay for a portion of the chiropractor's fee.

A complaint was received based on delay in receiving information about foster care requested from the Post Adoption Registry in May 1990. However, by December 1990, the requested information had not been received. Investigation determined that the delay was due to staffing shortages; however, the Department agreed to telephone the complainant, explain the situation, and supply a date by which the information would be available. This satisfied the complainant.

An individual complained about the termination of social allowance benefits and an unfair assessment of two months overpayment. Investigation by my office established that the complainant had collected benefits in another province for the month of July 1989, but had moved to Alberta early in that month and subsequently obtained social assistance for the same period here. An August cheque was later issued in another province to the complainant, but he did not receive it. The Department was misadvised by its provincial counterparts about the presence of the complainant in that province during August and the Alberta social worker dealing with the matter failed to take account of substantial evidence to the contrary. As a result of the investigation, the overpayment was re-assessed at one month and social allowance benefits were re-instated effective September 1, 1989.

A handicapped caller complained on Augsut 29, 1990, that an Income Security cheque for the month of September had not been received. Evidently it had been sent to an old address. The caller had nowhere to stay for the weekend and was desperate for food. A cheque was being issued from the Assured Income for the Severely Handicapped (AISH) program and there were no provisions for an emergency issue of funds.

Contact was made with one of the Department's administrators and steps were taken to issue a replacement cheque.

A number of calls were received throughout the year from people who had been trying to make contact with the Department to apply for Income Security. Allegations were that the telephones were always busy.

In each case, contact was made with the appropriate District Office. The problem was outlined and the complainants subsequently received prompt call backs.

A telephone complaint was received from an individual who had been advised by a doctor to use disposble diapers on a child. The complainant was in receipt of Income Security from the Department as, due to the child's many medical problems, it was impossible to maintain employment. There had been a change in social workers and the new worker was resistant to the caller's expressed need for the disposable diapers.

Informal contact with the appropriate manager resolved the issue and there was an agreement to provide the disposable diapers.

Towards the end of October 1990, a call was received from an individual whose spouse had applied for Assured Income for the Severely Handicapped (AISH) benefits in August 1989, but had heard nothing since then. On each occasion telephone contact was made with the office to find out what was happening, but the staff member handling the file was "too busy to talk".

The manager of the District Office involved was contacted. The file showed that correspondence had been directed to the complainant in October 1989, but no response and no action had been taken since then. The caller's allegation was outlined and, subsequently, the manager telephoned the complainant and the application was put back on track.

A telephone complaint was received from an individual who had been receiving social assistance benefits for a year, but on moving and checking with the office to ensure the change of address had been properly recorded, found that benefits were terminated. Attempts to reach the social worker had been unsuccessful.

Inquiries were made of the District Office Manager, and it was discovered that termination arose from confusion as to receipt of Students Finance Board funding. Additional information had been requested about this but not received. As a result of this office's involvement, the social worker concerned provided a voucher for rent and arranged for prompt mailing of the following month's social allowance cheque.

A complaint was received from a single parent with a 12 year old child who had moved from another province three weeks earlier. In temporary accommodation with a parent, arrangements had been made to rent a house, but the rent cheque had been delayed and the Department had not acted upon three or four estimates for the cost of furniture. Attempts to reach a social worker had been unsuccessful.

Contact was made with the Department, the matter was reviewed, and two cheques, one for rent and one for furniture, were prepared for collection later that day.

6. Health

The Department of Health has implemented a policy that when different therapists separately treat members of the same family, permission will be sought from the individual clients before any information is exchanged. Additionally, when a complaint is received against a therapist, the complainant will be informed of the right to lodge a complaint with the therapist's professional association.

This situation was provoked by a complaint that therapists treating a husband and wife exchanged information without first obtaining the consent of their respective clients. Additionally, the Department did not make it clear that there was a right to complain to the therapist's professional association.

The Department of Health developed a policy on the administration of medication in response to unforeseen contingencies at the Alberta Hospital.

Recognition of a need for this arose from an investigation into a voluntary patient's complaint about treatment at the Hospital. The complainant raised a number of issues, one of which related to medication being given against this individual's will in a crisis situation. The circumstances in which such medication will now be administered are to be clearly defined by a physician.

The Department of Health made amendments to the Alberta Health Care Insurance Regulations to enable refugee claimants who entered Canada prior to January 1, 1989, to apply for coverage under the Alberta Health Care Insurance Plan.

The issue as to whether persons claiming refugee status under federal immigration legislation were eligible for coverage under the Alberta Health Care Insurance Plan, came to my notice when a number of complaints were received from refugees, resident in the province. The Department had originally taken the position that refugees living in the province and awaiting a federal decision as to their status, were not "*residents*" of the province and, therefore, were excluded from the Alberta Health Care Insurance Plan. A change in legislation combined with a much faster federal process resolved the issues.

A senior citizen complained that Alberta Health Care would only cover $1,200 of an $8,090 dental bill. The $1,200 limit was set by the Alberta Basic Dental Health Benefits Schedule. It was determined that the need for dental work arose after a fall resulted in a fractured jaw which subsequently became infected. The operation was a necessity. The Department agreed to provide an additional $6,000 from the Family Health Services budget which was designed for special cases such as this.

A caller alleged that Alberta Health Care was refusing to provide reimbursement for a spouse's dental treatment because the sex had not been identified on the claim submission. It was contended that as that individual's Alberta Health Care number had been on the claim form and the name readily identified the sex, this was bureaucratic.

Inquiries revealed that claims were computer scanned and automatically rejected if there were deficiencies regardless of what they were. The Department agreed to process the complainant's claim by hand.

An individual contacted this office to complain that although there was a change of residence to another province in June 1989, Alberta Health Care was billing for premiums in respect of the months of June to September 1989. Proof of the move had been supplied to no avail. Contact with the Department resulted in cancellation of the billing.

7. Labour

A caller complained in July 1990, that the Employment Standards Branch had not acted on a claim filed five months earlier.

Contact was made with the Department, the delay was acknowledged and immediate steps were taken to resolve the problem. A partial settlement was promised for that week and further action the following week. The following day the complainant called back and confirmed that considerable progress had been made.

8. Municipal Affairs

Alberta Municipal Affairs made a change to its procedures for acknowledging receipt of appeals against decisions on first home loan applications. This will now come from program staff and contain formal notification of onward transmission of an appeal to the Appeals Committee.

The matter came under review when an appellant complained about inordinate delay in processing an application for the review of a decision made by the Department.

A couple was promised a house trailer from the Rural and Native Housing Program. In preparation, they received permission from the Improvement District Manager to clear a lot. The Local Development Appeal Board had approved the lot, which required the waiver of a section of the **Planning Act.** However, the Alberta Planning Appeal Board did not approve the waiver of the section. By the time the final decision was made, the complainants had already incurred substantial costs in clearing the lot.

The Department acknowledged that the complainants were misled and offered them another lot nearby, agreeing to deduct the costs they had incurred on the first lot from the purchase price of the second.

9. Personnel Administration Office

The Personnel Administration Office agreed to change the procedures of the Management Classification Appeal Board. Information sent to applicants prior to a hearing is to be expanded to include setting out the procedure to be used by the Board and explaining that parties will have an opportunity to object to the composition of the Panel before the hearing commences. The actual procedure has also been adjusted to enable parties to cross-examine one another and to make closing statements. Finally, where an appeal has been initiated, the responding party will be advised to provide a written summary of rationale to an appellant.

This adjustment arose out of an investigation into the handling of a position classification by the Personnel Administration Office. The complainant's position was submitted for re-classification from manager to senior manager, but this was unsuccessful. In the subsequent appeal process, the complainant felt that there was insufficient information provided prior to the hearing and that a fair hearing was not given.

10. Solicitor General

- The Department of the Solicitor General, in conjunction with the Department of Family and Social Services, developed a coordinated procedure to assist mentally ill inmates upon their release from correctional centres.

This action arose from an investigation into an allegation that no programs or help was available to inmates suffering from mental illness at the time of release from custody. There was an extensive investigation, which resulted in the complaint being unsubstantiated as programs were available. However, it became clear that there was a lack of coordination between the two Departments. **(Note: Complaint is also noted with the Department of Family and Social Services).**

- The Department of the Solicitor General adopted a number of recommendations for changes to policy, administration and security procedures at a young offender centre. These entailed increased supervision of offenders in the kitchen area, thorough orientation of contract employees in respect of security and emergency procedures, yearly reviews of all areas where co-educational programs exist to examine supervisory levels, a regular review of inspection and service of locking mechanisms, and supervision of work crew inmates during their breaks.

These recommendations arose from an investigation requested by the Solicitor General after he became aware of an incident involving two young offenders at that institution, whereby one of the young offenders became pregnant.

- The Department of the Solicitor General changed a policy whereby former inmates of provincial correctional centres were not allowed to visit their immediate family members in provincial institutions until six (6) months from the date of their release and could not generally visit others for five (5) years. It was agreed that the only individuals who should be prevented from visiting an offender should be those where there was specific reasonable cause to deny the visit. In such cases, the reasons for denial of visitation rights should be provided to both visitor and offender, unless there was a legitimate security reason for not doing so.

The complaint causing this investigation came from an inmate of a provincial correctional centre who was denied a visit from a common-law spouse because the spouse was a recently released inmate of the institution.

- The Department of the Solicitor General recognized and implemented a policy directive addressing the seizure and subsequent disposal of items of contraband.

The absence of a specific policy directive was noted in the course of an investigation into an inmate's complaint about a Temporary Absence Pass being unfairly revoked. It came to light that the inmate in question had been found in possession of the keys to the kitchen of the institution, but although the inmate was dealt with and transferred, the keys were left in the inmate's possession.

- The Department of the Solicitor General issued a director's directive to ensure that health care staff of correctional centres inform escorting officers of medical concerns with inmates being transported to and from correctional centres.

This was the result of a complaint that was investigated into the transportation of a prisoner suffering from asthma. The prisoner was entitled to receive proper medication and prescribed inhalers for the asthmatic condition, but while being moved between correctional centres, the inmate was not provided with medication for the condition.

- The Department of the Solicitor General agreed to strengthen its policies with regard to the administering of medication to inmates of correctional centres. Inmates must now give their consent to medication unless there is a life threatening situation identified by an attending physician.

This decision came about as a result of an investigation into an allegation that tranquillizers had been forcibly given to an inmate.

- An inmate was transferred from one provincial correctional centre to another. Personal effects were sent at a later date, but it was alleged that $1,000 worth of property was not received. Investigation partially supported the complaint as the record of property sent out did not match the delivery. Reimbursement of $400 was provided.

- An inmate of a provincial correctional centre complained that protective custody and a transfer to a centre closer to family had been denied. Investigation revealed no administrative or procedural error, but resulted in the complainant being moved to a centre closer to the complainant's family.

- An inmate complained of being improperly convicted on an internal charge of threatening an officer which resulted in an increased security rating and transfer. Investigation by my Office showed that the threat was made in the form of a hand-written note. It

was referred to handwriting experts who could not confirm or reject the conclusion that the complainant was the writer. Under the circumstances, it was recommended that the conviction be quashed and it was. Investigation, therefore, resulted in the conviction of threatening violence being removed from the inmate's record. Such a conviction could have delayed temporary absences or resulted in denial of access to some programs.

A verbal complaint was received from an individual whose driver's license had been suspended because of poor vision. The caller's employer and optometrist did not believe there was a problem.

It was explained to the complainant that there was a procedure whereby he could appeal to the Driver Control Board and then to the Court of Queen's Bench and the address of the Driver Control Board was provided.

A call was received from an individual who had been arrested for outstanding traffic tickets and released under the fine option program. This necessitated daily travel to a larger centre which took one and a half hours of time and a substantial expenditure for travel. As a result, there was a serious negative impact on the complainant.

Contact was made with an official in the Department and arrangements were made for the fine option to be served in the complainant's home town.

A caller contacted this office to complain that a charge of careless driving had been reduced to "following too close". The complainant was quoted an automobile insurance premium payment of $1,500 as opposed to $730. The insurance company decision was based on information received from the Motor Vehicle Branch that there had been a conviction for careless driving.

The Department was contacted, the situation explained, and as a result of subsequent contact between the Department and the Courthouse, the Department's records were corrected. A complimentary driver's abstract was provided to the complainant.

11. Transportation and Utilities

An employee with many years of experience in the Department and an allegedly exemplary personnel file applied for a promotional position. It was, however, filled by an inexperienced junior individual. There was suggestion of unfair and undue influence.

The caller was advised that as a member of the Alberta Union of Provincial Employees he should consider going through the formal grievance procedure which was outlined to him. It was pointed out that this office could not intervene in such a situation unless and until all available avenues of appeal had been completed.

Boards and Agencies

1. Alberta Government Telephones

Alberta Government Telephones accepted that its policies and procedures with respect to collection of delinquent accounts were inadequate. It linked outstanding business debts to residential service accounts, which were in good standing. The necessary changes were made.

This situation came to light when a complainant protested that a residential telephone service had been disconnected as a result of a spouse's delinquent business account.

It was alleged that Alberta Government Telephones had inadequately compensated an individual for property damaged during the course of the laying of telephone cables. Investigation revealed that reclamation had not been properly carried out after the cable had been laid and Alberta Government Telephones agreed to haul and spread top soil, disc the land, provide required spraying and repair the fence in the affected area.

2. Alberta Mortgage and Housing Corporation

The Alberta Mortgage and Housing Corporation will now write to individuals who are unsuccessful in tendering on property, giving the reasons for not accepting their bids. Previously, it had been the Corporation's policy to only advise of rejection.

This issue surfaced during the course of an investigation into an allegation that the sole tender on a parcel or real estate had been rejected for political reasons. The allegation was not substantiated, but the agency accepted that it should be providing a rationale for each decision it makes, unless the reason for rejecting a bid is obvious.

3. Public Safety Services

The Department of Public Safety Services acknowledged that it required a formalized procedure to ensure that complaints leading to dismissal of personnel were thoroughly investigated and supported by documentation. An appropriate policy was put into place.

This was prompted by a complaint received from a former employee, who had been dismissed on the basis of poorly documented and third hand information.

4. Students Finance Board

An individual complained about the delay in processing an application for a $2,500 student loan to take a

hairdressing course. That course had to be paid for in full before the commencement date; however, the routine four week delay in processing would mean that the complainant would be unable to pay in time and would therefore be unable to attend.

Contact with the Board resulted in the application being more quickly processed.

5. Workers' Compensation Board

☐ The Workers' Compensation Board acknowledged that there were a number of instances where complainants had not had their requests for appeal forwarded to the appropriate appeal body. As a result, specific direction was given to adjudication staff that any indication by a claimant of a desire to appeal must be referred to the appropriate appeal body. That appeal body would then decide if the request was an appropriate appeal.

☐ The Workers' Compensation Board also acknowledged that there was a problem in tracking files which had been re-opened. This was because a re-opened file did not become active in the agency data base unless such action was specifically requested. Procedures were put into place to facilitate the tracking and supervision of re-opened files.

☐ One individual injured in February 1990, filed a claim on March 13, 1990, but had received no benefits by September of that year and, as a result of financial hardship, had to rely on social assistance benefits. Intervention resulted in a $5,000 advance for arrears and an apology for the delay in handling the claim.

☐ A worker laid off on November 6, 1989, due to a work-related condition, had received nothing by February 1990. Contact by this office resulted in a $1,500 advance and acceleration of the claim handling process.

☐ A complainant, injured in October 1989, and subsequently off work from May 1990, had received no decision on the claim by July 1990. Investigation confirmed there had been undue delay and resulted in a priority appeal hearing.

☐ A claimant injured in April 1988, did not initially lose any time at work. The injury, however, triggered a degenerative condition leading to progressive discomfort, irritation and pain. Physiotherapy followed in June and July 1989, and payment of travel expenses was promised by the Board. By October 1990, however, nothing had been received despite a substantial number of contacts. Involvement by my Office concluded with internal disciplinary action being taken and the opening of a new claim and payment of expenses incurred.

☐ An individual complained of two delays, the first being in the assessing of eligibility for a Permanent Partial Disability pension, and the second in providing reimbursement for vision care products required as a result of an eye injury. Initial correspondence indicated the eye condition would be assessed within six months. At the six month interval, the first steps in having the claim assessed for pension purposes commenced, but it took three months to get up-to-date medical information from the worker's personal physician and a further five and one half months to refer the package of information to an ophthalmic consultant for an opinion. On investigating, it was determined that the Board had experienced some difficulty in locating an eye consultant. However, immediate action was taken to clear a backlog of eye claims that had accumulated and the complainant received payment for a two month acccumulation of vision care receipts.

24

Excerpts from the Ombudsman Act

The excerpts that follow describe the functions and duties of the Ombudsman, the types of complaints he will investigate and those he will not, and the essence of the procedure that takes place once the Ombudsman has accepted a complaint for investigation.

Functions and duties

11(1) It is the function and duty of the Ombudsman to investigate any decision or recommendation made, including any recommendation made to a Minister, or any act done or omitted, relating to a matter of administration and affecting any person or body of persons in his or its personal capacity, in or by any department or agency, or by any officer, employee or member thereof in the exercise of any power or function conferred on him by any enactment.

(2) The Ombudsman may make an investigation either on a complaint made to him by any person or of his own motion, and he may commence an investigation notwithstanding that the complaint may not on its face be against a decision, recommendation, act or omission as mentioned in subsection (1).

(3) The powers and duties conferred on the Ombudsman by this Act may be exercised and performed notwithstanding any provision in any Act to the effect

(a) that any decision, recommendation, act or omission mentioned in subsection (1) is final,

(b) that no appeal lies in respect thereof, or

(c) that no proceeding or decision of the person or organization whose decision, recommendation, act or omission it is shall be challenged, reviewed, quashed or called in question.

Jurisdiction restricted

12(1) Nothing in this Act authorizes the Ombudsman to investigate

(a) any decision, recommendation, act or omission in respect of which there is under any Act a right of appeal or objection or a right to apply for a review on the merits of the case to any court or to any tribunal constituted by or under any Act until after that right of appeal or objection or application has been exercised in the particular case or until after the time prescribed for the exercise of that right has expired,

(b) any decision, recommendation, act or omission of any person acting as a solicitor for the Crown or acting as counsel for the Crown in relation to any proceedings, or

(c) any decision, recommendation, act or omission of the Mental Health Patient Advocate or an employee of the Mental Health Patient Advocate appointed or employed under the **Mental Health Act.**

(2) If any question arises as to whether the Ombudsman has jurisdiction to investigate any case or class of cases under this Act, he may, if he thinks fit, apply to the Court of Queen's Bench for a declaratory order determining the question.

Refusal to investigate

14(1) If in the course of the investigation of any complaint it appears to the Ombudsman

(a) that under the law or existing administrative practice there is an adequate remedy, other than the right to petition the Legislature, for the complainant, whether or not he has availed himself of it, or

(b) that, having regard to all the circumstances of the case, any further investigation is unnecessary,

he may in his discretion refuse to investigate the matter further.

(2) The Ombudsman may, in his discretion, refuse to investigate or cease to investigate any complaint

(a) if it relates to any decision, recommendation, act or omission of which the complainant has had knowledge for more than 12 months before the complaint is received by the Ombudsman, or

(b) if in his opinion,

(i) the subject matter of the complaint is trivial,

(ii) the complaint is frivolous or vexatious or is not made in good faith, or

(iii) the complainant has not a sufficient personal interest in the subject matter of the complaint.

Conduct at investigation

16(1) Every investigation by the Ombudsman under this Act shall be conducted in private.

(2) The Ombudsman may hear or obtain information from any persons he thinks fit and he may make inquiries he thinks fit.

Evidence at investigation

17(1) Subject to this section and section 18, the Ombudsman may require any person who, in his opinion, is able to give any information relating to any matter being investigated by him

(a) to furnish the information to him, and

(b) to produce any document, paper or thing that in his opinion relates to the matter being investigated and that may be in the possession or under the control of that person,

whether or not that person is an officer, employee or member of a department or agency and whether or not the document, paper or thing is in the custody or under the control of a department or agency.

Procedure after investigation

20(1) This section applies when, after making an investigation under this Act, the Ombudsman is of the opinion that the decision, recommendation, act or omission that was the subject matter of the investigation

(a) appears to have been contrary to law,

(b) was unreasonable, unjust, oppressive or improperly disciminatory or was in accordance with a rule of law, a provision of any Act or a practice that is or may be unreasonable, unjust, oppressive or improperly discriminatory,

(c) was based wholly or partly on a mistake of law or fact, or

(d) was wrong.

(2) This section also applies when the Ombudsman is of the opinion

(a) that in the making of the decision or recommendation, or in the doing or omission of the act, a discretionary power has been exercised

(i) for an improper purpose,

(ii) on irrelevant grounds, or

(iii) on the taking into account of irrelevant considerations,

or

(b) that, in the case of a decision made in the exercise of a discretionary power, reasons should have been given for the decision.

(3) If, when this section applies, the Ombudsman is of the opinion

(a) that the matter should be referred to the appropriate authority for further consideration,

(b) that the omission should be rectified,

(c) that the decision should be cancelled or varied,

(d) that any practice on which the decision, recommendation, act or omission was based should be altered,

(e) that any law on which the decision, recommendation, act or omission was based should be reconsidered,

(f) that reasons should have been given for the decision, or

(g) that any other steps should be taken,

the Ombudsman shall report his opinion and his reasons for it to the appropriate Minister and to the department or agency concerned, and may make any recommendations he thinks fit and in that case he may request the department or agency to notify him within a specified time of the steps, if any, that it proposes to take to give effect to his recommendations.

(4) If within a reasonable time after the report is made no action is taken which seems to the Ombudsman to be adequate and appropriate, the Ombudsman, in his discretion after considering the comments, if any, made by or on behalf of the department or agency affected, may send a copy of the report and recommendations to the Lieutenant Governor in Council and may thereafter make any report to the Legislature on the matter that he thinks fit.

(5) The Ombudsman shall attach to every report sent or made under subsection (4) a copy of any comments made by or on behalf of the department or agency concerned.

Results of investigation to complainant

21(1) If the Ombudsman makes a recommendation under section 20(3) and no action that seems to the Ombudsman to be adequate and appropriate is taken on the recommendation within a reasonable time, the Ombudsman shall inform the complainant of his recommendation and make whatever comments on the matter he thinks fit.

(2) The Ombudsman shall in any case inform the complainant, in the manner and at the time he thinks proper, of the result of the investigation.

Annual report

27(1) The Ombudsman shall in each year make a report to the Legislature on the exercise of his functions under this Act.

(2) The Ombudsman may, from time to time, in the public interest or in the interests of any person or department or agency, publish reports relating

(a) generally to the exercise of his functions under this Act, or

(b) to any particular case investigated by him,

whether or not the matters to be dealt with in any such report have been the subject of a report to the Legislature.

(3) The Ombudsman shall not, in a report made under this section, express any opinion or make any comment that is adverse to

(a) any department or any officer or employee of a department,

(b) any agency or any member or employee of an agency, or

(c) any other person or group of persons,

unless prior to making the report to the Legislature or publishing the report pursuant to subsection (2), as the case may be, the Ombudsman has given that department, agency, officer, member, employee, person or group of persons an opportunity to know the nature of the opinion or comment and to make representations to him in respect of it either personally or by counsel.

Offences and penalties

30 Any person who,

(a) without lawful justification or excuse, wilfully obstructs, hinders or resists the Ombudsman or any other person in the exercise of his powers under this Act,

(b) without lawful justification or excuse, refuses or wilfully fails to comply with any lawful requirement of the Ombudsman or any other person under this Act, or

(c) wilfully makes a false statement to or misleads or attempts to mislead the Ombudsman or any other person in the exercise of his powers under this Act,

is guilty of an offence and is liable to a fine of not more than $1000 and in default of payment to imprisonment for a term not exceeding 3 months.